

*vastavit*, to except the case out of the general power of the executor to dispose of the estate. But in equity, it seems now to be established, (contrary to the earlier cases,) that an executor or administrator, can make no valid sale or pledge of the assets, as a security for, or in payment of, his own debts, upon the ground, that the transaction itself gives the purchaser or mortgagee notice of the misapplication, and necessarily involves his participation in the breach of duty. The authorities brought together and referred to in 2 *Williams on Executors*, 612, seem clearly to maintain this principle; and especially the cases of *Hill vs. Simpson*, 7 *Ves.*, 152; *McLeod vs. Drummond*, 17 *Ves.*, 154, and *Field vs. Schieffelin*, 7 *Johns. Ch. Rep.*, 155. In the last case, the Chancellor said, that, upon full examination of the authorities, he found a perfect agreement in this: "that the purchaser from the executor would be safe, if he is no party to the fraud in the executor, and had no knowledge or proof that the executor intended to misapply the proceeds, or was, *in fact*, by the very transaction, applying them to the extinguishment of his own private debt." "The great difficulty has been to determine how far the purchaser dealt at his peril, when he knew, from the very face of the proceeding, that the executor was applying the assets to his own private purposes, as the payment of his own debts;" "and that the later and better doctrine is, that, in such a case, he does buy at his peril."

Some of the cases distinguish between taking from the executor, as a pledge, assets, for an *antecedent* debt, and for money advanced at the *time* of the transfer; and as to the first, it is said, all the cases agree, that the interest of the pawnee is defeasible by creditors, or legatees, whilst, with reference to the latter, the validity of the contract depends on the same considerations that would effect an absolute sale, under like circumstances. 2 *Wms. on Exrs.*, 612, note (1.)

It will be found, I think, upon an examination of the cases, that though the courts are less disposed to interfere with the title of the assignee, when the assignment is made for money advanced at the time; yet that circumstance is very far from